LIBRARY
SUPREME COURT, U. S.

TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1961

No. 72

DAVID WALTON CRAMP, JR., APPELLANT,

vs.

BOARD OF PUBLIC INSTRUCTION OF
ORANGE COUNTY, FLORIDA

APPEAL FROM THE SUPREME COURT OF THE STATE OF FLORIDA

FILED MARCH 27, 1961
JURISDICTION POSTPONED MAY 29, 1961

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1961

No. 72

DAVID WALTON CRAMP, JR., APPELLANT,

vs.

BOARD OF PUBLIC INSTRUCTION OF ORANGE COUNTY, FLORIDA

APPEAL FROM THE SUPREME COURT OF THE STATE OF FLORIDA

INDEX

	Original	Print
Record from the Circuit Court of the 9th Judicial Circuit in and for Orange County, Florida		
Complaint	1	1
Answer	6	5
Stipulation	8	6
Memorandum opinion	9	7
Final decree	11	8
Assignments of error	14	9
Proceedings in the Supreme Court of the State of Florida	15	11
Opinion, Thornal, J.	15	11
Judgment	25	20
Order denying petition for rehearing	27	20
Notice of appeal to the Supreme Court of the United States	28	21
Clerk's certificate (omitted in printing)	31	23
Order postponing jurisdiction	32	23

RECORD PRESS, PRINTERS, NEW YORK, N. Y., JULY 21, 1961

[fol. 1]

IN THE CIRCUIT COURT OF THE 9th JUDICIAL CIRCUIT IN AND FOR ORANGE COUNTY, FLORIDA

IN CHANCERY

No. 38699

DAVID WALTON CRAMP, JR., Plaintiff,

vs.

THE BOARD OF PUBLIC INSTRUCTION OF ORANGE COUNTY, FLORIDA, a body corporate, Defendant.

COMPLAINT—Filed January 11, 1960

The plaintiff, by his undersigned attorneys, states:

1. The plaintiff is a resident of Orange County, Florida, and is over the age of twenty-one years.

2. The defendant is a body corporate created by the Legislature of the State of Florida, and is charged with the administration of the public schools located in Orange County, Florida.

3. The plaintiff has been employed by the defendant for nine years last past in the capacity as teacher, and is now employed in that capacity at William R. Boone High School, located in the City of Orlando, County of Orange and State of Florida.

4. The plaintiff has been requested by the principal of the said high school (one of the instructional personnel employed by the defendant) to subscribe to the following oath prescribed by F.S. §876.05 as follows:

> "I, ..., a citizen of the State of Florida and of the United States of America, and being employed by or an officer of ..... and a recipient of public funds as such employee or officer, do hereby

solemnly swear or affirm that I will support the Constitution of the United States and of the State of Florida; that I am not a member of the Communist Party; that I have not and will not lend my aid, sup-
[fol. 2] port, advice, counsel or influence to the Communist Party; that I do not believe in the overthrow of the Government of the United States or of the State of Florida by force or violence; that I am not a member of any organization or party which believes in or teaches, directly or indirectly, the overthrow of the Government of the United States of of (sic) Florida by force or violence."

5. Plaintiff has been advised that the execution of said oath is a statutory prerequisite to his continued employment by the defendant, and that upon his failure to subscribe to said oath, he can be immediately discharged and his name can be removed from the payroll of the defendant.

6. The plaintiff avers that he has, does and will support the Constitution of the United States and of the State of Florida; he is not a member of the Communist Party; that he has not, does not and will not lend, aid, support, advice, counsel or influence to the Communist Party; he does not believe in the overthrow of the Government of the United States or of the State of Florida by force or violence; he is not a member of any organization or party which believes in or teaches directly or indirectly the overthrow of the Government of the United States or of Florida by force or violence.

7. The plaintiff is a loyal American and does not decline to execute or subscribe to the aforesaid oath for fear of the penalties provided by law for a false oath.

8. The plaintiff avers, however, that the requirement of the statutes of Florida and of the defendant that he execute the said oath as a condition precedent to his continuing employment by the defendant is a violation of his rights as a free, loyal American citizen as guaranteed by the First and the Fourteenth Amendments to the Constitution of the United States and Sections 12, 13 and 15 of the Decla-

ration of Rights and Article 16, Section 2 of the Constitution of the State of Florida. The said oath, insofar as [fol. 3] it requires plaintiff to swear or affirm that he has not lent aid, support, advice, counsel or influence to the Communist Party is an ex post facto law, illegally retroactive, and deprives him of liberty and property in violation of due process of law guaranteed by the Fourteenth Amendment of the United States Constitution; that the aforesaid oath, insofar as it requires plaintiff to swear or affirm that he has not and will not lend aid, support, advice, counsel or influence to the Communist Party without the qualification that he has not *knowingly* and will not *knowingly* lend aid, support, advice, counsel or influence to the Communist Party, is arbitrary and capricious and deprives plaintiff of due process of law guaranteed by the Fourteenth Amendment; that the aforesaid oath, insofar as it requires plaintiff to swear or affirm that he is not a member of any organization or party which believes in or teaches, directly or indirectly, overthrow of the Government of the United States or of the State of Florida by force or violence without the qualification that he is not a member of any organization or party which to his knowledge so believes or teaches, is arbitrary and capricious and deprives plaintiff of due process of law guaranteed by the Fourteenth Amendment; that the aforesaid oath, insofar as it seeks to deprive plaintiff of his employment for failure to swear or affirm that he is not a member of the Communist Party and has not lent his aid, support, advice, counsel or influence to the Communist Party and is not a member of any organization or party which believes in or teaches, directly or indirectly, the overthrow of the Government of the United States or of the State of Florida by force or violence, is a bill of attainder and unconstitutional under § Art. I, §9 of the United States Constitution; and that the requirement of the oath in its entirety deprives [fol. 4] plaintiff of freedom of association and due process of law guaranteed by the First and Fourteenth Amendments of the United States Constitution.

9. For the reasons above set forth, the plaintiff declines to execute or subscribe to the oath as set forth in F.S. 876.05.

10. The plaintiff fears that the defendant will discharge or attempt to discharge him from its employ as a consequence of his declining to execute or subscribe to the said oath.

11. The action of the defendant in discharging or attempting to discharge the plaintiff from its employ would constitute irreparable damage, harm and injury to the plaintiff in that he would be unable to work as a teach, (sic) the work for which he has been trained and in which he has specialized for approximately ten years last past.

12. The plaintiff is in doubt as to his rights and obligations with regard to the defendant as the same are affected by a statute whose validity and constitutionality is questioned by the plaintiff, and the plaintiff desires a declaration of his rights and status thereunder.

Wherefore and by reason of the foregoing, the plaintiff prays that this Honorable Court take jurisdiction of the within cause and determine the validity of F.S. 876.05 et seq., insofar as the same is applicable to the plaintiff, if at all, and to construe the plaintiff's rights and obligations thereunder as an employee of the defendant, and pending such determination to temporarily enjoin the defendant from discharging or attempting to discharge the plaintiff from its employ, and upon a final determination of the rights, obligations and status of the plaintiff under the provisions of F.S. 876.05 et seq. to permanently enjoin the defendant from requiring that the plaintiff execute the [fol. 5] oath required by F.S. 876.05 and to permanently enjoin the defendant from discharging the plaintiff for his failure to execute the said oath.

Tobias Simon and Howard W. Dixon, Attorneys for Plaintiff, 706 Ainsley Building, Miami, Florida.

By: Tobias Simon.

Duly sworn to by David Walton Cramp, Jr., jurat omitted in printing.

Certificate of Service (omitted in printing).

[fol. 6]

IN THE CIRCUIT COURT OF ORANGE COUNTY

ANSWER OF DEFENDANT—Filed March 9, 1960

Comes now Defendant by its undersigned attorneys and for answer to the complaint filed herein says:

1. Defendant admits the allegations of Paragraph 1 of the complaint.

2. Defendant admits the allegations of Paragraph 2 of the complaint.

3. Defendant admits the allegations of Paragraph 3 of the complaint.

4. Defendant admits the allegations of Paragraph 4 of the complaint. Defendant further avers that recently the County Superintendent of Public Instruction of Orange County, Florida, discovered that plaintiff had never executed the oath prescribed by Section 876.05, Florida Statutes, and the County Superintendent thereupon transmitted a form embodying such oath to the principal of said high school with the request that such principal get the same executed by plaintiff. The principal thereupon, either personally or by an employee of defendant working in the principal's office, submitted said oath to the plaintiff but plaintiff refused to execute same. After the principal personally discussed the matter with the plaintiff, who persisted in his refusal, the principal reported such refusal to the County Superintendent. The said County Superintendent then intended to discuss the matter with plaintiff in the hope that plaintiff would reconsider his refusal to execute the oath and proceed to execute the oath, but the Christmas Holidays intervened and before the County Superintendent had an opportunity to discuss the matter with plaintiff, plaintiff instituted this suit.

5. Defendant is without knowledge of the truth of the allegations of Paragraph 5 of the complaint.

[fol. 7] 6. Defendant is without knowledge of the truth of the allegations of Paragraph 6 of the complaint.

7. Defendant is without knowledge of the truth of the allegations of Paragraph 7 of the complaint.

8. Defendant denies the allegations of Paragraph 8 of the complaint.

9. Defendant admits that plaintiff has declined to execute the oath set forth in Section 876.05, Florida Statutes, and admits that by Paragraph 9 of his complaint plaintiff declines to execute said oath for the asserted reason that said Section 876.05 is unconstitutional.

10. Defendant is without knowledge of the truth of the allegations of Paragraph 10 of the complaint.

11. Defendant denies the allegations of Paragraph 11 of the complaint.

12. Defendant is without knowledge of the truth of the allegations of Paragraph 12 of the complaint.

J. R. Wells, Allen McCormick, Of Maguire, Voorhis & Wells, 135 Wall Street (P.O. Box 633), Orlando, Florida, Attorneys for Defendant.

[fol. 8]

IN THE CIRCUIT COURT OF ORANGE COUNTY

STIPULATION—March 11, 1960

The defendant having filed its Answer herein and the plaintiff desiring to set the case down for hearing on bill and answer and the defendant being willing that the case be heard on bill and answer, it is stipulated as follows:

1. Plaintiff hereby sets this case down for hearing on bill and answer.

2. This case may be forthwith determined by the Court on bill and answer.

• • • • • • •

Dated: March 11, 1960.

J. R. Wells, Allen K. McCormick, Of Maguire, Voorhis & Wells, 135 Wall Street (P.O. Box 633), Orlando, Florida, Attorneys for Defendant.

Tobias Simon, ..., 706 Ainsley Building, 14 N.E. First Avenue, Miami 32, Florida, Attorneys for Plaintiff.

[fol. 9]

IN THE CIRCUIT COURT OF ORANGE COUNTY

MEMORANDUM OPINION—March 16, 1960

The pertinent question rajsed by the pleadings on bill and answer is whether the requirement of F.S. 876.05 et seq. as a condition precedent for the payment of public funds to a state employee violates the State and Federal Constitutions.

Although plaintiff by his sworn complaint, has in effect, plainly shown that he may, if he so desires, execute the required oath without fear of the penalties required by the law for a false oath, nevertheless he complains that the Act requiring the execution of a loyalty oath as a condition for public employment is a violation of due process. The Florida Supreme Court, in State vs. Diez, 97 So.2d, 105 held:

> "In fine, we think the loyalty oath may be required without interfering with the Federal Government's operations against sedition; *we think the pertinent law does not offend against the Constitution;* we think the Act was intended to have a retrospective effect;" (emphasis supplied).

The State of Florida, acting through its duly elected representatives has the inherent right, through statutory law, to impose reasonable conditions precedent for public employment. Under the provisions of the challenged Act an employee of the State has his freedom of association as well as freedom of speech and the privilege of advocating ideas secured to him by the First Amendment to the Constitution of the United States so long as he can conscientiously execute the oath required by law. If he cannot do so he has the freedom of seeking employment elsewhere. The State has the right to preserve its integrity by requiring its employees, as one of the prerequisite conditions of employment, to subscribe to the loyalty oath. This is an inherent right secured to the body politic and under such circumstances the freedoms secured to the individual employee by the Constitution become subservient.

[fol. 10] Plaintiff contends that the oath required by F.S. 876.05 is unconstitutional by reason of the failure to contain the elements of wilfulness and scienter. This contention was answered by the Florida Supreme Court in State vs. Diez, 97 So.2d, 105:

> "This conclusion does not lead to a decision declaring the Act unconstitutional because we think it is inherent in the law that when one takes the oath that he has not lent aid, advice, counsel and the like to the communist party, he is representing under oath that he has not done so knowingly."

It therefore follows that F.S. 876.05 et seq. is constitutional and is mandatory as a condition precedent for public employment.

Since the defendant has denied the allegations in Paragraph 11 of the Complaint such allegations may not be considered as being proven on bill and answer. Therefore the prayer for a permanent injunction in all respects should be denied for the reason stated herein.

Dated at Orlando, Florida, March 16, 1960.

Roger A. Barker, Circuit Judge.

[fol. 11]

IN THE CIRCUIT COURT OF ORANGE COUNTY

FINAL DECREE—March 16, 1960

This cause having been set down by plaintiff for hearing on bill and answer, and the parties having stipulated that the parties might, on or before Monday, March 14, 1960, submit to the Court for its consideration copies of any briefs used before the Supreme Court of Florida by the parties or by the amicus curiae on this litigation as well as any other memorandum briefs or copies of decisions that the parties might wish to submit, and that the Court might thereupon dispose of the case without a formal oral argument and without other or further notice, and the Court having examined and studied the pleadings herein together with copies of briefs used before the Supreme

Court of Florida and other memorandum briefs and decisions as aforesaid submitted to the Court for its consideration as aforesaid, and the Court after due consideration being fully advised in the premises and being of the opinion that plaintiff is entitled to a determination regarding the constituionality (sic) and validity as to him of Sections 876.05 or 876.06, Florida Statutes, and the Court having concluded from its study that said Sections 876.05 and 876.06, Florida Statutes, are constitutional and valid as to plaintiff for the reasons stated in its memorandum opinion filed herein,

It Is Ordered, Adjudged and Decreed that said Sections 876.05 and 876.06, Florida Statutes, are hereby declared, determined and adjudged to be constitutional and valid as to plaintiff and not subject in any respect to the attacks made on same by plaintiff in his complaint.

It Is Further Ordered, Adjudged and Decreed that the plaintiff's prayer for a permanent injunction be and the same is hereby denied in all respects.

[fol. 12] Done and Ordered at Orlando, Florida, this 16th day of March, A. D. 1960.

Roger A. Barker, Circuit Judge.

[fol. 14]

IN THE CIRCUIT COURT OF ORANGE COUNTY

ASSIGNMENTS OF ERROR—Filed March 25, 1960

The plaintiff assigns as the errors on which he intends to rely in the Supreme Court of Florida for reversal of the final decree of the Circuit Court of the Ninth Judicial Circuit in and for Orange County, Florida, appealed from, the following:

1. The Court erred in making and entering its final decree of March 16, 1960, for the reason that the said final decree is contrary to law.

2. The Court erred in making and entering its final decree of March 16, 1960, for the reason that the said final decree violates the rights guaranteed to the plaintiff by the First and Fourteenth Amendments to the Constitution of the United States, and Sections 12, 13 and 15 of the Declaration of Rights of the Constitution of the State of Florida, and Article 16, Section 2, of the Constitution of the State of Florida, in that inter alia that insofar as the plaintiff has been required to comply with the provisions of F.S. 876.05, he has been required to obey an ex-post-facto law, he has been subjected to a bill of attainder, he has been compelled to take action to swear or affirm as to his past actions without the inclusion that he has not knowingly done the actions and matters forbidden by the aforesaid Statute, he has been deprived of the due process of law and of the equal protection of the law.

I Hereby Certify that a true copy of the above Assignments of Error was mailed this 23rd day of March, 1960, to Maguire, Voorhis & Wells, attorneys for defendant, 135 Wall Street, Orlando, Florida.

Howard W. Dixon and Tobias Simon, Attorneys for Plaintiff, 706 Ainsley Building, Miami, Florida, By Tobias Simon.

[fol. 15]

IN THE SUPREME COURT OF FLORIDA

July Term, A. D. 1960

Case No. 30,598

DAVID WALTON CRAMP, JR., Appellant,

vs.

THE BOARD OF PUBLIC INSTRUCTION OF ORANGE COUNTY, FLORIDA, Appellee.

OPINION—Filed November 16, 1960

An Appeal from the Circuit Court for Orange County, W. A. Pattishall, Judge.

Tobias Simon and Howard Dixon, for Appellant.

J. R. Wells and Allen K. McCormick of Maguire, Voorhis & Wells, for Appellee.

Richard W. Ervin, Attorney General, Ralph E. Odum and William J. Roberts, Assistant Attorneys General, for Appellee.

Thornal, J.

Appellant Cramp who was plaintiff below seeks reversal of a final decree sustaining the validity of Sections 876.05-876.06, Florida Statutes.

We must decide whether the cited statute, which prescribes a so-called "loyalty oath" as a condition to public employment, offends various provisions of the State and Federal Constitutions.

Plaintiff Cramp had served approximately nine years in the public school system of Orange County. It was then discovered that through an oversight, he had never been required to execute the oath required by Section 876.05, Florida Statutes. The appellee Board immediately demanded that the oath be executed. The school teacher-

[fol. 16] appellant refused. He based his refusal on the contention that the statutory requirement of the execution of the oath as a condition to continuing his employment as a public school teacher violated certain constitutional rights. Fearing dismissal he filed his complaint for a declaratory decree. He sought a temporary injunction against dismissal pending the litigation, and an ultimate decree adjudicating the invalidity of the statute. The chancellor denied the temporary restraining order. Cramp v. Board of Public Instruction, Fla., 118 So. 2d 541. On final hearing the chancellor upheld the statute against appellant's assault. The prayer for a permanent injunction was denied. By direct appeal, Article V, Section 4, (2), Florida Constitution, we are requested to reverse the final decree.

Appellant Cramp contends here, as he did in the trial court, that the subject statute is fatally vulnerable on various constitutional grounds. In sum, it is his position that the Florida loyalty oath statute is defective because it fails to specify knowledge or scienter as an element of the proscribed conduct. Appellant also contends that the statute destroys the traditional presumption of innocence and shifts the burden of proof by legislative enactment without due process; it is claimed that the statute is a bill of attainder and an ex post facto law and that it is so vague that it is unintelligible. Cramp claims that the Federal government has pre-empted the field of sedition control. Finally, he says that the Florida constitutional oath prescribed by Article XVI, Section 2, is exclusive and, therefore, does not permit any additional legislative prescription.

The appellee School Board by its brief undertakes to defend the statute against each of the attacks leveled by the appellant.

By Section 876.05, Florida Statutes, all persons employed by the State or any county or city, or school board, are required to subscribe to the following oath:

> "I, ... a citizen of the State of Florida and of the United States of America, and being em-
> [fol. 17] ployed by or an officer of ..... and

> a recipient of public funds as such employee or officer, do hereby solemnly swear or affirm that I will support the Constitution of the United States and of the State of Florida; that I am not a member of the Communist Party; that I have not and will not lend my aid, support, advice, counsel or influence to the Communist Party; that I do not believe in the overthrow of the Government of the United States or of the State of Florida by force or violence; that I am not a member of any organization or party which believes in or teaches, directly or indirectly, the overthrow of the Government of the United States or of Florida by force or violence."

It is required that the oath be filed with the employing governmental agency prior to the approval of any salary voucher. Section 876.06, Florida Statutes, provides for the discharge of any person who refuses to subscribe to the quoted oath.

Sections 876.05-876.06 supra, were Sections 1 and 2, Chapter 25046, Laws of Florida, 1949. We have concluded that the chancellor ruled correctly in upholding the statute against the appellant's attack.

With as much brevity as the importance of the question permits we shall proceed to dispose of each of appellant's contentions.

It is asserted that the prescribed oath does not include an element that the maker thereof had knowledge of the subversive nature of the affiliations at the time he engaged in them. In other words, appellant contends that a man should not be held liable for a false oath if he swears to non-subversive associations when in effect, he is or has been innocently and unknowingly aligned with a subversive or-[fol. 18] ganization. We think this matter has been placed at rest by us as well as by the Supreme Court of the United States. In State v. Diez, Fla., 97 So. 2d 105, we held that the element of scienter was implicit in each of the requirements of the statute. Conceding the essentiality of this element, we there upheld the statute with our interpretation to the effect that implied in each requirement was the presence of scienter or knowledge. Although appellant

avers that this constitutes "a judicial amendment of the statute" we find ourselves supported in such an interpretation by respectable authority. Lerner v. Casey, 357 U. S. 468; Adler v. Board of Education, 342 U. S. 485, 27 A.L.R. 2d 472; Garner v. Board of Public Works, 341 U. S. 716; Gerende v. Board of Supervisors, 341 U. S. 56.

We are not disturbed by appellant's reliance on Wieman v. Updegraff, 344 U. S. 183. While this decision involved a similar loyalty oath, the highest court of the State of Oklahoma had held that the element of scienter was not essential to validity and also that it was absent from the requirements of the act. The Supreme Court of the United States merely accepted the Oklahoma court's interpretation of its State statute as to the implication of scienter. The United States Court reversed when it held that scienter was essential. On the other hand, the implication of scienter was sustained in those decisions which we have cited to support our view.

We think the time is now passed when statutes of this type are subject to question because of alleged pre-emption of the field of subversive control by the Federal Government. Appellant presses his claim in this regard with continued reliance on Commonwealth of Pennsylvania v. Nelson, 350 U. S. 497. In sustaining this same statute against the same attack in Diez v. State, supra, we indicated our view that Nelson did not preclude paralleling state action on the same problem. We specifically so held in Gibson v. Florida Legislative Investigation Committee, Fla. 1959, 108 So. 2d 729, cer. den. 360 U. S. 919. The Supreme Court of [fol. 19] the United States similarly announced its own position on the same subject in Uphaus v. Wyman, 360 U. S. 72. Moreover, we could actually lay aside this contention on the further ground that the instant statute legitimately prescribes an element of required qualifications precedent to public employment. The statute under discussion is merely a legislative enactment asserted within the orbit of the state's police power. It simply stipulates certain conditions under which individuals can work for the State. The subversive control aspect is involved only tangentially. The primary objective of the statute is to exclude from public employment persons lacking in the stipulated qualifi-

cations or in converse, persons burdened with stipulated disqualifying qualities. Beilan v. Board of Public Education, 357 U. S. 399; Adler v. Board of Education, 342 U. S. 485, 27 A.L.R. 2d 472; Lerner v. Casey, 357 U. S. 468; Thorp v. Board of Trustees, 6 N. J. 498, 79 A. 2d 462; Nostrand v. Balmer, Wash., 335 P. 2d 10, but see Nostrand v. Little, 362 U. S. 474; Laba v. Newark Board of Education, 23 N. J. 364, 129 A. 2d 273; Appeal of Albert, 372 Pa. 13, 92 A. 2d 663; Fitzgerald v. City of Philadelphia, 376 Pa. 379, 102 A. 2d 887; Kaplan v. School District of Philadelphia, 388 Pa. 213, 130 A. 2d 672; State ex rel. Schweitzer v. Turner, 155 Fla. 270, 19 So. 2d 832.

Appellant contends further that the oath prescribed by Section 876.05, supra, is unconstitutional for the reason that it imposes requirements additional to those stated in the constitutional oath prescribed by Article XVI, Section 2, Florida Constitution. To this end we are requested to follow the decision of the Supreme Court of New Jersey in Imbrie v. Marsh, 3 N. J. 578, 71 A. 2d 352, 18 A.L.R. 2d 241. Were we inclined to concur in the decision of the New Jersey Supreme Court on this point and we interpolate that we are not, we are here led by the facts of the instant case to distinguish the situation before us from that presented in the New Jersey matter. It was there held that a loyalty oath in addition to the stipulated constitutional oath similar to ours, could not be imposed upon candidates for the office of governor or members of the Legislature. [fol. 20] We do not have a state officer involved here. The Florida Constitution requires that the oath be taken by "each and every officer of this State, . . ." The appellant Cramp is a school teacher and therefore, an employee as distinguished from an officer in the constitutional sense. State ex rel. Holloway v. Sheats, 78 Fla. 583, 83 So. 508; IX U. Fla. L.R. 47 (Spring 1956). The constitutional oath prescribed by Article XVI, Section 2, supra, must be taken by all state officers but is not a stipulated requirement of an employee. New Jersey itself has made the distinction. Thorp v. Board of Trustees, 6 N. J. 498, 79 A. 2d 462. Hence, appellant is not in a class adversely affected by the statutory requirement on this point, and is therefore not in a position to gain support from this argument.

In practically all the cases decided by the Supreme Court of the United States on the subject of loyalty oaths as a condition to public employment attacks have been directed on the ground of alleged vagueness, on the contention that freedom of speech and assembly are impinged and that the presumption of innocence is destroyed. In each instance dealing with similar statutes and similar situations the United States Supreme Court has consistently upheld the statutes against such assaults. Certainly the instant statute is perfectly clear in its requirements. There could be no doubt in the minds of anyone who can read English as to the requirements of the statute and the effect of a failure to comply. Adler v. Board of Education, supra.

It has long been recognized that the First Amendment freedoms are not absolutes in and of themselves. When they are asserted as a barrier to government action we are confronted by the necessity of balancing the asserted private right against the alleged public interest. The private right will certainly not be lightly regarded. However, an indirect adverse effect on the asserted right of the individual will not preclude the exercise of governmental power when the power is shown to exist and its assertion is necessitated by the exigencies of the public wellbeing. Barenblatt v. United States, 360 U.S. 109.

[fol. 21] As we have pointed out in other parts of this opinion, the failure to take the required oath does not work an adjudication of guilt nor does it burden the employee with the responsibility of proving innocence against an assertion of guilt. Statutes of this type have been consistently sustained on the theory that they constitute merely a stipulation of qualifications or disqualifications for public employment. The statute contains no prohibition against the right of a citizen to speak out or to assemble peaceably. It merely provides that when one speaks out to advocate the violent overthrow of the government of the United States, or assembles for that purpose, he cannot simultaneously work for and draw compensation from the government he seeks to overthrow.

Finally we proceed to what is probably the most difficult aspect of the instant statute. So far as we have been able to ascertain, Florida is the only state which requires the

employee to swear " . . . that I have not lend [lent] my aid, support, advice, counsel or influence to the Communist Party; . . . " Others might have similar provisions but we have been referred to none. This particular provision was upheld in Diez v. State, supra. In that opinion also, we construed the word "lend" as meaning "lent" when applied to the oath regarding past conduct. We are again fronted by the contention that the Florida Statute constitutes a bill of attainder prohibited to the states by Article I, Section 10, Constitution of the United States. This is so, asserts the appellant, because when the employee is required by law to take an oath that he has not at any time in the past aided or supported the Communist Party, or else suffer the pain of dismissal, the Legislature is adjudicating his guilt without benefit of trial and an opportunity to defend. Appellant refers to the recognized definition of a bill of attainder as a legislative enactment which adjudicates guilt without benefit of judicial trial. He points further to the prohibition against ex post facto laws which precludes giving retroactive effect to past conduct in order to support present punishment. Article [fol. 22] I, Section 10, supra. For reasons we hereafter mention, the Supreme Court of the United States has upheld similar statutes against similar assaults. We must confess recognition of the necessity to subordinate our own conclusions to those of the higher authority on the subject. However, we find it in most instances a little difficult to reconcile the recent decisions of the United States Court with its earlier precedents in Cummings v. Missouri, 4 Wall. 277, 18 L. Ed. 356 and ex parte Garland, 4 Wall. 333, 18 L. Ed. 366. Moreover, the opinion of this Court in McNealy v. Gregory, 13 Fla. 417, clearly committed Florida to the ruling of the Cummings decision.

In recent years, however, the Supreme Court of the United States has, with almost invariable consistency, construed Cummings and Garland as involving a situation in which there was no reasonable relationship between the past conduct proscribed and the then current business or profession from which it was sought to exclude an individual solely account of his past conduct. In other words, the United States Court has merely held that there was no

reasonable relationship between the profession of the Catholic Priest in Cummings, or that of the lawyer in Garland and the proscribed past conduct of having had affiliations with the then defeated Confederacy. This Court has likewise so construed Cummings and Garland. Page v. Watson, 140 Fla. 536, 192 So. 205; Diez v. State, supra. As stated above, this position is supported by numerous recent decisions of the Supreme Court of the United States. Hawker v. New York, 170 U. S. 189; Garner v. Board of Public Works, 341 U. S. 716; Adler v. Board of Education, 342 U. S. 485; Beilan v. Board of Public Education, 357 U. S. 399.

In view of these interpretations of Cummings and Garland we find no difficulty in concluding that there is a reasonable relationship between the vital profession of teacher in the public school system and past associations with subversive organizations. Beilan v. Board of Education, supra; Adler v. Board of Public Instruction, supra. [fol. 23] In this connection, however, we deem it appropriate to indicate a concern over the exercise of this power to proscribe long past conduct. The imposition of sanctions as retribution for past acts has potentials for impinging upon many of our traditional concepts of due process, property rights, and fair play in the multitudinous relationships between the individual and his government. However, for reasons hereafter stated, we find it unnecessary to decide whether denial of public employment could be construed as "punishment" within the prohibition against ex post facto laws. Speiser v. Randall, 357 U. S. 513. Solution to that problem will have to await the appropriate case. McNealy v. Gregory, supra.

By the allegations of his complaint, the appellant under oath affirmatively denied any present or past associations which would preclude him from executing the subject oath. He stated in his complaint " . . . that he has not, does not, and will not lend (sic) aid, support or advice (sic) counsel or influence to the Communist Party; . . . " Further, the appellant disavows any belief in the violent overthrow of either the State or Federal government. He denies membership in any organization which believes in or teaches such conduct. The complaint alleges that appellant "is a loyal

American" and he states that he does not decline to execute the required oath because of fear of penalties for the making of a false oath.

Appellant comes into court seeking a declaratory decree to determine his rights under the subject statute. He claims that the mere requirement of the oath impinges on his constitutional freedoms and therefore entitles him to the declaratory decree. However, in order to obtain an adjudication of the invalidity of a statute the appellant must carry the burden of demonstrating that the enforcement of the law would adversely affect him. It being clear from the allegations of his own complaint that he has never been affiliated with any proscribed association, we are not persuaded that the requirement that he so state under oath could adversely affect him. In other words, there could [fol. 24] not possibly be a legislative adjudication of guilt for the simple reason that the complaint on which appellant stands affirmatively points out that appellant has never been connected with any organization that could result in guilt. Furthermore, as to this appellant the statute could not constitute an ex post facto law for the obvious reason that appellant asserts that he has never in the past been connected with any association which could lead to current punishment. In short, because of the allegations of his own complaint the appellant teacher has unequivocally demonstrated that he has no standing to assault the subject statute on the grounds that it is a bill of attainder, or an ex post facto law.

We have thoroughly considered every aspect of the appellant's contentions. We have studied all of the authorities submitted by the parties and many others produced by our own research. We fail to find any error in the decree under attack and it is therefore affirmed.

It is so ordered.

Thomas, C.J., Terrell, Hobson, Drew and O'Connell, JJ., and Mason, Circuit Judge, concur

[fol. 25]

IN THE SUPREME COURT OF FLORIDA

July Term A. D. 1960

DAVID WALTON CRAMP, JR., Appellant,

vs.

THE BOARD OF PUBLIC INSTRUCTION OF ORANGE COUNTY, FLORIDA, a body corporate, Appellee.

JUDGMENT—November 16, 1960

This cause having heretofore been submitted to the Court upon the transcript of record of the decree herein, and briefs and argument of counsel for the respective parties, and the record having been seen and inspected, and the Court being now advised of its judgment to be given in the premises, it seems to the Court that there is no error in the said decree; it is, therefore, considered, ordered and decreed by the Court that the said decree of the Circuit Court be and the same is hereby affirmed; it is further ordered by the Court that the Appellee do have and recover of and from the Appellant costs in this behalf expended, except the $25.00 filing fee which has been paid by the Appellant, and that all costs shall be taxed in the Court in which the appeal was entered, all of which is ordered to be certified to the Court below.

The Opinion of the Court in this cause prepared by Mr. Justice Thornal was this day ordered to be filed.

[fol. 27]

IN THE SUPREME COURT OF FLORIDA

ORDER DENYING PETITION FOR REHEARING—January 17, 1961

On consideration of the Petition for Rehearing filed by Attorneys for Appellant,

It Is Ordered by the Court that the said petition be, and the same is hereby, denied.

[fol. 28]

IN THE SUPREME COURT OF THE STATE OF FLORIDA

DAVID WALTON CRAMP, JR., Appellant,

vs.

THE BOARD OF PUBLIC INSTRUCTION OF ORANGE COUNTY, FLORIDA, Appellee.

NOTICE OF APPEAL TO THE SUPREME COURT OF THE UNITED STATES

I.

Notice Is Hereby Given that David Walton Cramp, Jr., the Appellant above named, hereby appeals to the Supreme Court of the United States from the Final Decree of the Supreme Court of Florida sustaining the validity of Sections 876.05 and 876.06, Florida Statutes, entered herein on November 16, 1960 (Petition for Re-Hearing thereon having been denied by Order of the Supreme Court of Florida on January 17, 1961).

This appeal is taken pursuant to 28 U.S.C., Section 1257(2).

II.

The Clerk of the Supreme Court of Florida will please prepare a transcript of the record in this cause for transmission to the Clerk of the Supreme Court of the United States, and include in said transcript the following:

	Date of Filing	*Kind of Instrument*
1.	January 11, 1960	Complaint
2.	March 9, 1960	Answer of Defendant
3.	March 16, 1960	Stipulation
4.	March 16, 1960	Memorandum Opinion of the Circuit Court in and for Orange County, Florida

[fol. 29]

	Date of Filing	*Kind of Instrument*
5.	March 16, 1960	Final Decree of Circuit Court in and for Orange County, Florida
6.	March 25, 1960	Notice of Appeal to the Supreme Court of Florida
7.	March 25, 1960	Assignments of Error to be relied upon in appeal to the Supreme Court of Florida
8.	November 16, 1960	Opinion of the Supreme Court of Florida
9.	November 24, 1960	Petition for Re-Hearing
10.	January 17, 1961	Order of the Supreme Court of Florida Denying Petition for Re-Hearing

III.

The following questions are presented by this appeal:

1. Whether F.S. 876.05 and 876.06, which require the Appellant, as a teacher and an employee of the Board of Public Instruction of Orange County, Florida, a body corporate, and "all persons who now or hereafter are employed by or who now or hereafter are on the payroll of the State", execute the following oath:

> "I, ..., a citizen of the State of Florida and of the United States of America, and being employed by or an officer of .....; and a recipient of public funds as such employee or officer, do hereby solemnly swear or affirm that I will support the Constitution of the United States and of the State of Florida; that I am not a member of the Communist Party; that I have not and will not lend my aid, support, advice, counsel or influence to the Communist Party; that I do not believe in the overthrow of the Government of the United States or of the State of

Florida by force or violence; that I am not a member of any organization or party which believes in or teaches, directly or indirectly, the overthrow of the Government of the United States or of Florida by force or violence."

are in violation of the Fourteenth Amendment to the Constitution of the United States, upon the grounds that they [fol. 30] deny to the Appellant, the due process of law, and the equal protection of the laws; and are further in violation of the Fourteenth Amendment to the Constitution of the United States, upon the ground that they deny to the Appellant freedom of speech, thought, and association; and are further in violation of Article 1, Section 10, of the Constitution of the United States, upon the ground that they constitute a Bill of Attainder and an Ex Post Facto law.

Tobias Simon, Attorney for Appellant, 706 Ainsley Building, Miami 32, Florida.

Certificate of Service (omitted in printing).

[fol. 31] Clerk's Certificate to foregoing transcript (omitted in printing).

[fol. 32]

SUPREME COURT OF THE UNITED STATES

No. 849—October Term, 1960

DAVID WALTON CRAMP, JR., Appellant,

vs.

BOARD OF PUBLIC INSTRUCTION OF ORANGE COUNTY, FLORIDA.

ORDER POSTPONING JURISDICTION—May 29, 1961

Appeal from the Supreme Court of the State of Florida.

The statement of jurisdiction in this case having been submitted and considered by the Court, further consideration of the question of jurisdiction is postponed to the hearing of the case on the merits.